IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA, 1928

CRP.No. 1007 of 2006()

OS.200/2004 of III ADDL.SUB COURT, KOZHIKODE

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REVN. PETITIONER:

C.P. SADANANDAN, RESIDING AT KALA,
DHARMADAM P.O., THALASSERY,
KANNUR DISTRICT.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENTS:

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1. M/S. FRIDGE HOUSE, EAST NADAKKAVU,
CALICUT-6, KACHERI AMSOM DESOM,
PROPRIETORS M/S.NATESAN BROTHERS,
A REGD.PARTNERSHIP FIRM, REPRESENTED BY ITS
PARTNER AND POWER OF ATTORNEY HOLDER T.RAGHAVAN,
S/O. THILAKARAJAN, WAYANAD ROAD, CALICUT-6.

2. M/S.LILLY & LILLY,
MAIN ROAD, SULTHAN BATHERY,
WAYANAD DISTRICT, SHOWN TO BE REPRESENTED BY
PARTNER C.P. SADANANDAN, RESIDING AT KALA,
DHARMADAM P.O., THALASSERY, KANNUR DISTRICT.

3. RINOSH PATHROSE
PARTNER,
M/S.LILLY & LILLY
THODIKULANGARA HOUSE
KUPPADI P.O.
SULTHAN BATTERY
WAYANAD DISTRICT.

BY ADV. SRI.T.G.RAJENDRAN FOR R1

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

1. Carbon copy of the order dated 1-11-2006, in O.S.200/04 Sub Court, Kozhikode.

/true copy/

P.S. To Judge

M.Sasidharan Nambiar,J.

C.R.P.No.1007 of 2006

Dated this the 4th day of January,2006

O.R.D.E.R

Petitioner is the second defendant and first respondent the plaintiff and respondents 2 to 4 the other defendants in O.S.200/04 on the file of Sub court, Kozhikod. The suit was filed for realisation of Rs.1,10,000/- allegedly due from defendants in respect of purchases made on credit basis. Case of plaintiff in the plaint was that plaintiff is the authorised dealer of refrigerators and other home appliances and defendants used to purchase refrigerators and home appliances on credit from the plaintiff firm and credit facility was given to defendants because they are known in the business transaction. Only second defendant contested the suit. Second defendant was sued as one of the partners of the first defendant firm M/s.Lilly & Lilly, Sulthan Bathery. Defendants are all residents of either Thalassery or Sulthan

Bathery. Second defendant contended that Sub Court, Kozhikod has no territorial jurisdiction to try the suit as transaction was entered into at Sulthan Bathery. As per finding dated 1.11.06 learned Sub Judge found that Sub Court, Kozhikod has territorial jurisdiction and posted the case for trial on other issues. It is challenged in this revision petition filed under section 115 of the Code of Civil Procedure.

2. Learned counsel appearing for petitioner and first respondent plaintiff were heard.

3. The arguments of learned counsel appearing for petitioner was that learned Sub Judge has relied on the documents produced by plaintiff and on the basis of the documents held that partners of first defendant firm had another firm namely Essar Agencies and Essar Agencies used to place orders on behalf of first defendant firm and relying on the signature of 4th defendant in a letter dated 16.11.1999 found that he is the Managing Partner of first defendant firm and

therefore court has territorial jurisdiction to try the suit. The learned counsel argued that without oral evidence learned Sub Judge should not have relied on the said documents, to find that Sub Court, Kozhikod has territorial jurisdiction. Learned counsel appearing for first respondent submitted that in the plaint itself it was pleaded that the transaction took place within the jurisdiction of Sub Court, Kozhikod and in such circumstance, there is no reason to interfere with the finding.

4. Rule 2 of Order XIV of Code of Civil Procedure provides that subject to the provisions of sub rule (2), court has to pronounce judgment on all issues. Under sub rule (2) where issues of both law and of fact arise in the same suit and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue and for that purpose it may postpone the settlement of other issues. The court is competent to enter a finding on an issue which

could be decided on the basis of law, if it relates to jurisdiction of the court or a bar to the suit created by any law for the time being in force. But when the question of territorial jurisdiction is to be decided preliminarily on the basis of matrials produced as evidence, learned Sub Judge should have decided all the issues together or the preliminary issue after recording evidence. On the facts and circumstances, I find merits in the arguments of the learned counsel appearing for the petitioner that learned Sub Judge relied on the documents which are not proved or admitted. In such circumstance, the finding of the trial court dated 1.11.06 is set aside. Learned Sub Judge is directed to try all the issues together including the issue on territorial jurisdiction, after recording evidence.

Civil Revision is disposed as above.

M.Sasidharan Nambiar
Judge

tpl/-

M.SASIDHARAN NAMBIAR, J.

CRL.R.P.NO. /97

ORDER

MARCH,2006